

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA</b>	<b>:</b>	<b>DATED FILED: August 12, 2020</b>
<b>v.</b>	<b>:</b>	<b>CRIMINAL NO. 20-</b>
<b>MATTHEW SWARTZ</b>	<b>:</b>	<b>VIOLATION:</b>
		<b>26 U.S.C. § 7202 (willful failure to collect tax-1 count)</b>

**INFORMATION**

**COUNT ONE**

**THE UNITED STATES ATTORNEY CHARGES THAT:**

At all times material to this information:

1. Defendant MATTHEW SWARTZ was the sole proprietor of the Grainery Group LLC (hereafter “the Grainery”). The Grainery was the parent company for multiple restaurants and bars that defendant SWARTZ operated in the Philadelphia, Pennsylvania area. The restaurants/bars included the Grainery Restaurant, Farmer’s Cabinet, Butcher and Brewer, and Sutton’s Parlour.

2. Defendant MATTHEW SWARTZ exercised control over the business affairs of the restaurants operating under the Grainery parent company, including staffing and maintaining payroll. As part of the payroll responsibilities, defendant SWARTZ prepared employee wage statements, distributed payroll checks, and responded to issues regarding payroll checks when employees reported problems with their checks. Defendant SWARTZ had the responsibility to collect, truthfully account for, and pay over the Grainery’s payroll taxes, which included withheld federal income taxes and Federal Insurance Contributions Act (FICA) taxes.

3. The Grainery employed general managers, managers, bar managers, bartenders, servers, dishwashers, and other positions related to the restaurants.

4. The Federal Insurance Contributions Act ("FICA") provides for a federal system of old-age, survivors, disability and hospital insurance. These insurances are financed by the Social Security Tax and the Medicare Tax, commonly referred to as "FICA" taxes. Under the Federal Insurance Contributions Act, 12.4% of wages paid to employees, up to an annual limit, must be paid into Social Security and an additional 2.9% of wages must be paid into Medicare. Total FICA taxes, therefore, are 15.3% of wages. Employers are required to withhold half of the FICA taxes (7.65%) from wages paid to their employees. The employer is responsible to pay a matching portion of 7.65%. The employer is responsible to collect and pay over these taxes. Employers are also required to report all wages paid and corresponding FICA taxes, as well as any federal income tax withholdings, on a quarterly basis using Employer's Quarterly Federal Tax Return, Form 941. Employers are also required to report annually using the Employer's Annual Federal Unemployment Tax Return, Form 940.

5. Defendant MATTHEW SWARTZ caused to be prepared and then distributed to employees documents related to their wages from the Grainery, including pay stubs, Form W-2 Wage, and Tax Statements, to record for the employees the amount of FICA taxes and federal income taxes that had been withheld from their wages. Based on these documents, the employees believed that FICA taxes and federal income taxes had been withheld from their paychecks and paid to the IRS.

6. However, from on or about at least March 2011 through at least October 2014, defendant MATTHEW SWARTZ, did not file employment tax forms 940 or 941 on behalf of The Grainery Restaurant Group LLC. Further, defendant SWARTZ failed to pay over the FICA taxes due and owing -- approximately \$ 484,307.53 -- based on the wages the Grainery Group paid to the general managers, managers, bar managers, bartenders, servers, dishwashers, and other positions related to the restaurants during this period. Because of this practice, defendant SWARTZ failed to properly collect and pay over the employment taxes to the Internal Revenue

Service (IRS), the FICA and withheld federal income taxes due and owing to the United States on the full amount of the wages paid to the general managers, managers, bar managers, bartenders, servers, dishwashers, and other positions related to the restaurants.

7. From on or about January 1, 2014 through on or about October 31, 2014, in Philadelphia, Pennsylvania, in the Eastern District of Pennsylvania and elsewhere, defendant

**MATTHEW SWARTZ,**

a person required under Title 26 of the United States Code to collect, account for, and pay over taxes due and owing in regards to cash payroll obtained by the employees, during each quarter in 2014, deducted and collected from the total taxable wages of his employees federal income taxes and Federal Insurance Contributions Act taxes in the aggregate sum of \$50,801. On or about the dates corresponding to the required quarterly filing deadlines, that is April 30, 2014, July 31, 2014, and October 31, 2014, defendant SWARTZ willfully failed to truthfully account for and pay over to the Internal Revenue Service the federal income taxes and Federal Insurance Contributions Act taxes due and owing to the United States of America for each of the quarters ending March 31, 2014, June 30, 2014, and September 30, 2014.

All in violation of Title 26, United States Code, Section 7202.

A handwritten signature in blue ink, appearing to read "William M. McSwain", followed by the word "for" in a cursive script.

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WILLIAM M. MCSWAIN  
United States Attorney

No. \_\_\_\_\_

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**UNITED STATES DISTRICT COURT**

Eastern District of Pennsylvania

Criminal Division

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**THE UNITED STATES OF AMERICA**

vs.

**MATTHEW SWARTZ**

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**INFORMATION**

Counts

26 U.S.C. Section 7202 (willful failure to collect tax - 1 count)

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A true bill.

\_\_\_\_\_  
Foreman

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Filed in open court this \_\_\_\_\_ day,  
Of \_\_\_\_\_ A.D. 20 \_\_\_\_\_

\_\_\_\_\_  
Clerk

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Bail, \$ \_\_\_\_\_

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